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VENABLE LLP
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OFFICE OF PETITIONS

In re Patent of Giovanola et al.	:	DECISION ON REQUEST
Patent No. 7,595,004	:	FOR RECONSIDERATION OF
Issue Date: September 29, 2009	:	PATENT TERM ADJUSTMENT
Application No. 10/538,743	:	AND NOTICE OF INTENT TO
Filing Date: June 14, 2005	:	ISSUE CERTIFICATE OF
Attorney Docket No. 82652-243259	:	CORRECTION

This is a decision on the "Request for Reconsideration of Patent Term Adjustment Calculation Under 35 U.S.C. 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4)" filed May 21, 2010, requesting review of the patent term adjustment set forth in a decision mailed April 21, 2010. The petition indicates the correct patent term adjustment appears to be 1,112 days, not 1,184 days.

The petition is **GRANTED**.

The patent issued on September 29, 2009. The patent set forth a patent term adjustment of 681 days, which is 711 days of delay under 35 U.S.C. § 154(b)(1)(A) ("A Delay") reduced by 30 days of delay under 35 U.S.C. § 154(b)(2)(C) ("Applicant Delay").

Patentees filed a Request for Recalculation of Patent Term Adjustment in View of *Wyeth* ("Wyeth Request") on February 17, 2010.

The Office issued a decision in response to the February 17, 2010 request on April 21, 2010. The decision stated a certificate of correction setting forth a patent term adjustment of 1,184 days would be issued unless a request for reconsideration of the decision was filed within the longer of one month or 30 days from the issuance date of the decision.

The patent term adjustment of 1,184 days set forth in the April 21, 2010 decision was the sum of 711 days of A Delay and 503 days of delay under 35 U.S.C. § 154(b)(1)(B) ("B Delay") reduced by 30 days of Applicant Delay.

The instant request was filed May 21, 2010. The instant request asserts the correct patent term adjustment is 1,112 days.

The Office has reviewed the record and agrees the correct patent term adjustment is 1,112 days.

Although the request authorizes the Office to charge any necessary fees to Deposit Account No. 22-0261, the request states Patentees do not believe any fees are due.

As stated in the April 21, 2010 decision, any request for reconsideration of the patent term calculation set forth in the decision must include the fee set forth in 37 C.F.R. § 1.18(e). Therefore, payment of the \$200 fee set forth in 37 C.F.R. § 1.18(e) is required.

If Patentees had filed a letter informing the Office the patent term adjustment determination on the April 21, 2010 decision appeared to be greater than appropriate, a fee would not be necessary because the Office could simply place the letter in the file without devoting resources to reviewing the merits of the letter.¹ However, Patentees did not file a letter. Instead, Patentees filed a request for the Office to reconsider the patent term adjustment determination set forth in the April 21, 2010 decision. As a result, the Office was required to address the merits of the request.

In view of the prior discussion, the \$200 fee has been charged to Deposit Account No. 22-0261.

The application is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the patent is extended or adjusted by **one thousand one hundred twelve (1112)** days.

Telephone inquiries specific to this decision should be directed to Senior Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

¹ See Treatment of Letters Stating that the USPTO's Patent Term Adjustment Determination is Greater than What the Applicant or Patentee Believes is Appropriate, 75 Fed. Reg. 42079 (July 20, 2010), 1357 Off. Gaz. Pat. Office 262 (August 24, 2010).

**UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION**

PATENT NO. : 7,595,004 B2
APPLICATION NO. : 10/538,743
DATED : September 29, 2009
INVENTOR(S) : Lucia Giovanola et al.

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the Title page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 681 days.

Delete the phrase "by 681 days" and insert -- by 1112 days--